Supreme Court, U.S.
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In The

Supreme Court Of The United States

TC,

Petitioner

Vs.

STATE OF CALIFORNIA

RESPONDENT

On Petition for Writ of Certiorari to
California Supreme Court

PETITION FOR WRIT OF CERTIORARI
With Appendix

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THE QUESTIONS PRESENTED FOR REVIEW

1. Should *Allen v. Illinois*, 478 U.S. 364 (1986) in light of *Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990 (Star Chamber tactics) be reconsidered an modified as the most desirable method of handling the problems of concurrent criminal and juvenile proceedings involving the same minor is for the juvenile proceedings to be stayed until after disposition of the related criminal proceedings?

2. In light of *Ingraham v. Wright* (1977) 430 U.S. 651, does a parent have the right to use reasonable corporal punishment when the Minor is in apparent rebellion against parental authority, school authority, and judicial authority?

3. Does a parent, in a child abuse case, have a constitutional right to a jury trial in a juvenile proceeding under either the California Constitution, Art I, section 16, or the U.S. Constitution, 7th Amendment as applied by the 14th Amendment?

4. In light of *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Ayotte v. Planned Parenthood of N. New England,* 546 U. S. 320 (2006) did the court below abuse its discretion in refusing to disclose the birth records of the minor and mother where there was substantial evidence that mother was under the influence of drugs at the time of birth affecting the child's development?

5. In light of *Boykin v. Alabama*, 395 U.S. 238 (1969), *In re Tahl*, 1 Cal.3d 122 (1969), *Goldberg v. Kelly*, 397 U.S. 254 (1970), did the court abuse when, notwithstanding the "plea agreement" it persisted in holding Father solely responsible, ignoring the conduct of the minor?

6. Did the trial court violate *Logan v. Zimmerman* (1982) 55 U.S. 422 (1982), when it ruled on the issue of reunification, then immediately ruling on the custody issues, cutting off Petitioner's right to petition for leave to appeal without the 10 days in which to do so?

7. In light of *M. L. B. v. S. L. J.*, 519 U.S. 102 (1996)), and the state analog *In re Marriage of McGinnis* (1992) 7 Cal.App.4th 473, did the court abuse its discretion in transferring custody of the Minor to the out-of state mother who had abandoned the Minor, never paid child support, and was evidently a recovering substance abuser, where the minor left California in defiance of court orders, with a half-sister wanted for offenses, without notice, opportunity to prepare, and the presentation of evidence on both sides?

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

OPINIONS BELOW

The California District Court of Appeals for the Third District's unpublished opinions appear in the Appendix, at pages A14 - A25.

JURISDICTIONAL STATEMENT

Petitioner believes that 28 U.S.C. § 1254(1) and Supreme Court Rule 20 probably confer *jurisdiction* on this court because the petition seeks review within 90, of a final decision of the California Supreme Court, January 21, 2009. App. A 25.

JURISDICTION OF STATE COURT

The federal issues raised here were first raised in the state trial court, and addressed by the appellate court. A petition for rehearing was denied. The California Supreme Court declined review. Appendix p. A26.

STATUTORY PROVISIONS INVOLVED

The following Statutes are involved:

U.S. Const., 7th Amendment:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Cal Const., Art. I, section 16:

"Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. **In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.** In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes in municipal or justice court the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court. In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

14th Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Welfare and Institutions Code §300:

Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile

court which may adjudge that person to be a dependent child of the court:

> (a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.
>
> (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child

with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.

No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness.

In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the

> petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.
>
> Welfare & Inst. C. 626

STATEMENT OF THE CASE

A. NATURE OF THE ACTION.

This is an petition seeking review of an order transferring physical and legal custody the minor child to the out-of-state mother who did not appear in the action below, has not seen her daughter in over 10 years, nor paid any child support, and terminating father's visitation rights, in a Health and Welfare Codes Section 300 case, and then dismissing the petition. Appellant challenges the disposition, and the constitutionality of the California juvenile justice system on its face and as applied.

There was an attempt to have the Minor deposed outside the presence of the Father. CT, p. 105.

Concurrent with the juvenile case was a criminal prosecution for battery on OC. CT, p. 126.

B. RELIEF SOUGHT IN THE TRIAL COURT; JUDGMENT

Father sought to have the petition dismissed on the grounds that he had used reasonable force which did not inflict undue harm in using corporal

punishment on his daughter because she was in rebellion against parental authority and school authority, which was corroborated during the proceedings below when she ran away from court ordered placement in defiance of judicial authority. E.g., RT, p. 32:20-21.

The Court awarded legal and sole physical custody to Mother and dismissed the Petition.

C. JUDGMENT OR ORDER APPEALED FROM

The court's order of dismissal was entered on January 29, 2008. CT 321.

The notice of appeal was filed February 6, 2008.

D. FINALITY OF DECISION BELOW

The California Supreme Court denied review on January 21, 2009. Appendix, p.

E. SUMMARY OF MATERIAL FACTS.[1]

1. Respondent's Case.

The Minor was placed into protective custody on October 15, 2006, after allegedly having been physically abused by her father. The Department of Employment and Social Services requested that the Court declare the minor, OC, a Dependent Child of the Yolo County Juvenile Court, and that the minor remain placed in out of home care. The Department requested that the Court order the father, TC, to participate in Family Reunification Services. Should

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[1] As there was no trial, no evidence presented by either side, the case is presented based on the pleadings, motions, and exhibits in the Clerk's Transcript (CT), together with argument and proffers appearing in the Reporter's Transcript (RT). Appellant at this point is merely summarizing the record most favorably for the prevailing party, without admitting the truth of the facts asserted.

the whereabouts of the mother, VM, become known, she would be assessed for the appropriateness of services. CT, pp. 122, 123.

2. Amendment of the Trial Court Petition

On April 24, 2007, Petitioner signed a written waiver of his right to a contested jurisdiction hearing on the basis "that father is unable to control the minor. (1 CT. pp. 108-109.) Father signed the waiver in light of the fact that the allegations were amended by agreement to read:

> b- 1. Minor has reported being hit by her father with a belt on more than one occasion; father denies this constituted abuse.
>
> b-2. Father states that he is unable to control the minor or meet the minor's needs.

The Court sustained the allegations of the amended petition, and found the child to be a minor described by Welfare and Institutions Code section 300(b) (1 CT. p. 109.) as amended (1 CT, p. 110)

Ms. STOLTZ: I am not sure the relevance of all this. The issues have to do with inappropriate physical discipline of the minor. We keep arguing with fetal alcohol or drug syndrome, as that somehow would excuse hitting the minor.[2] RT 2:11-15.

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[2] "(C) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held

The Respondent claimed that "On June 13, 2007, after lengthy discussion with the Court, the father withdrew his request for a contested disposition hearing. (RT. pp. 2-13.)" ROB, p. 4, first full paragraph. The problem with the claim is that it cites us to 11 pages to seek this so called withdrawal. Appellant insisted on his right to discipline. RT 2:16-21. Petitioner insisted there was a factual dispute regarding a defense. RT 2:23-28, RT 3:2-10.

3. The Father's Case – chronological order – CT 135 – 137.

09/07/07 Truancy. WJUSD,[3] 3/8/07, CT 135,

09/11/06 Failure to serve detention WJUSD, 3/8/07

09/15/06 Grade is D- LMS

09/24/06 Grade is F. LMS

October 14, 1006. Yolo County: Yolo County Child Protective Services respond to a protective custody of a 12 year old female minor. The reporting party reported that they were taking a 12 year old girl into protective custody as her father had hit her with a belt, leaving a red welt, with a bruise. Jurisdiction Report, 05/11/07.

10/24/06 4 Fs, 1 B, 2 Ds. In danger of failing. Poor effort. LMS Student Grade report 10/24/06

10/16/06 Failure to Serve detention WJUSD, 3/8/07

12/05/06 SST Meeting Notes:

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religious belief and if a less intrusive judicial intervention is available."

[3] Summarized from School Records. See reference at CT, p. 135.

12/12/06 Deterioration since removal from home; conduct problems.

12/14/06 Failure to Serve detention. WJUSD 03/08/07

12/18/06 Alcohol/Intoxicant/Controlled substance; Defiance of authority; Disruption of Class; Suspended. LMS 02/27/07; WJUSD, 03/08/07; Notice of Suspension.

12/19/06 Behavior contract.

12/20/06 Placed on behavior contract. WJUSD, 3/8/08; LMS, 12/20/06

01/17/07 Failure to serve detention. WJUSD, 03/08/07

01/26/07 Class disturbance WJUSD, 3/8/07

02/07/07 Onor's presence in the house is affecting Dixon's daughter. Onor is reported by Dixon as having cut her arms. Williams-Virgil, 02/28/07

02/14/07 WJUSD Psychological Evaluation. Reason: Lack of Focus, assignments not completed or turned in, off task behavior, and choosing not to work.

02/16/07 Class disturbance WJUSD, 3/8/07

02/16/07 Report Card: 1 P, 7 Fs. LMS

02/28/07 Class disturbance WJUSD, 3/8/07

03/08/07 1 B+, 4 D, 19 F. Assignment not completed. Study habits need improving. WJUSD, 3/8/08.

05/11/07 The minor is currently placed at Atkinson's Youth Services in Sacramento, California. Onor was placed at the low level, family style group

home on March 26, 2007. It is the minor's fourth placement since being placed into protective custody. The minor was initially placed in a foster family agency home and was moved to a Non-Related Extended Family Member placement which was unsuccessful. The minor was then moved to a respite foster family agency home and then moved to Atkinson's Youth Services. Jurisdiction Report, 05/11/07. CT, p. 123. One report indicates that she ran away from the group home for three days and came back "smelling of alcohol." Before that, she was with Dixon, got hold of Vicodin, and had to be transported to the hospital. CT, p. 127:18-20.

05/17/07 Skyla Deeann Moser, 19, of Woodland arrested 2:03 am, Thursday. Daily Democrat, Monday, May 21/07. Note: She is half-sister of Ono. Prior to being taken from home, Onor was not permitted to associate with her. When placed with Dixon, Onor was permitted to associate with Skyla.

October 15, 2007. Onor ran away from Diogenes Youth and Family Services Group Home in Sacramento. She returned October 19. CT 182 – 183.

REASONS FOR GRANTING THE PETITION

This Court should grant the instant petition for the reasons provided in Supreme Court Rule 10, subsections (a) and (c) as follows:

VI. QUESTION ONE: CONCURRENT JUVENILE AND CRIMINAL PROCEEDINGS

A. An Issue of First Impression; Conflict in This Courts Precedence

The contours of this issue is probably defined by *Allen v. Illinois*, 478 U.S. 364 (1986), where this court first held that a commitment proceeding was essentially civil, not criminal; hence the 5th Amendment was not relevant.

However, as shown in this case, Father was denied an opportunity to produce evidence or cross-examine his daughter, with the continuing threat of a pending criminal charges. The process had all of the earmarks of a Star Chamber. *See generally, Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990)

The importance of this issue requires a resolution of the due process rights of adults dragged into a juvenile court to be held accountable for harm to their children, with criminal charges pending.

This Court ought to now reconsider *Allen* decision, or limit it to the facts of that case in light of the present case in light of *Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990.

VII. QUESTION TWO: CORPORAL PUNISHMENT

A. Clearly Established Precedent in this Court.

This court has consistently held that a parent has the right to use corporal punishment, so long as reasonable. *Ingraham v. Wright* (1977) 430 U.S. 651 [Common law right]. There does not appear to be any disagreement with the right, but its scope and application.

The importance of this question is based on the due process rights of a parent dragged into a juvenile proceeding, with state criminal charges pending, where it appears that the whole point was to deny

evidence of a defense that would clearly be available in the criminal proceedings.

VIII. QUESTION THREE: PARENTS RIGHT TO JURY TRIAL IN A JUVENILE PROCEEDING

A. De Novo; 7 Amendment rights; 14th Amendment substantive Due Process as Right created by state constitution

This court has yet to find the 7th Amendment right to a jury trial in State proceedings. *Keiver v. Pennsylvania,* 403 U.S. 528 (1979) (No right to a jury trial under the 6th Amendment; real parties were minors; case was not of a criminal nature; 7th Amendment not raised.). However, the California Constitution grants that right, without limitation in both civil and criminal cases, requiring, in civil cases personal waiver of the right to a jury trial. California Const. Art. I, section 16. 14th Amendment Substantive Due Process Right.

Petitioner seeks review of this court's precedent on the 7th Amendment and Father's rights based on a State Right protected under the 14th Amendment.

The importance of this question is based on the due process rights of a parent dragged into a juvenile proceeding, with state criminal charges pending, where it appears that the whole point was to deny a jury trial in a criminal proceeding.

IX. QUESTION FOUR: DISCLOSURE OF THE BIRTH RECORDS OF THE MINOR AND MOTHER

A. Issue of First Impression: No known adverse case decision.

On November 28, 2007, Father requested release of the medical records. CT 190. The Court ordered them released, subject to a stipulation. Ibid. Counsel for the Child refused to stipulate." RT., p. 40:21. The records were once again requested at the disposition hearing on the issue of the needs of the Minor.

Under state law, there is a class-oriented construction of the law of evidence "fully consistent with the traditional purpose for admission of "syndrome" evidence, such as rape trauma syndrome and child molest syndrome evidence, to which battered women's syndrome evidence has been analogized in arguing for its admissibility. [Cite omitted.] It is admitted solely to disabuse jurors of "common sense" misconceptions about the behavior of persons in the affected groups. *People v. Erickson* (1997) 57 Cal.App.4th 1391 , 1401; *followed in People v. Brown* (2004) 33 Cal.4th 892, 909.

There is no known case, California or Federal, that has discussed Fetal Drug Syndrome, but it would appear to be an important question in light of the Child's medical and psychological is a factor to be considered as an explanation of the child's conduct. Moreover the trial court ordered medical and psychiatric treatment without any assurance that the treating physician was aware of the problem.

The right to due process, including confrontation is not limited to criminal cases; it extends to even administrative proceedings were statutory rights are at stake. *Goldberg v. Kelly*, 397 U.S. 254), 261-262

(1970).[4] *Followed in Clemons v. Mississippi*, 494 U.S. 738 (1990) (Capital sentencing.)

Thus there is involved an important federal issue: the rights of a Father to information about his daughter *Ayotte v. Planned Parenthood of N. New England*, 546 U. S. 320 (2006) (New Hampshire Parental Notification Statute) to assure proper care, treatment and custody of a child, *M.L.B. passim*, which is also critical for fathers defense.

X. QUESTION FIVE: IGNORING "PLEA AGREEMENT

A. Issue of First Impression: No known adverse case decision.

The Trial Court Petition was amended. The sole issue before the court was whether the Minors Conduct was such that father was unable to control her conduct and what remedies were required. *Ante*, p. 3.

The petition was not, and could not be used to sustain a finding that he abused the child because it would be tantamount to a violation of Father's

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[4] "(a) Such hearing need not take the form of a judicial or quasi-judicial trial, but the recipient must be provided with timely and adequate notice detailing the reasons for termination, and an effective opportunity to defend by confronting adverse witnesses and by presenting his own arguments and evidence orally before the decision maker." Surely, the terminating of a parent-child relationship is as important as terminating one's benefits.

Boykin-Tahl Rights.[5]), as he admitted only to an inability to control the child.

Thus there is presented an important issue as to waiver of those issues found by the court below. The existence of a waiver is a federal issue subject to *de novo* review in this court. *Generally*, *Ake v. Oklahoma*, 470 U.S. 68 (1985).

XI. QUESTION SIX: TRIAL COURT'S VIOLATION OF ZIMMERMAN

A. First Impression;

Logan v. Zimmerman, 55 U.S. 422 (1982),[6] holds that time limitations cannot impede or impair due process rights by arbitrary time constraints.

The trial court found during the reunification hearing that reunification had failed, and rather than giving Father an opportunity under State Law to file a petition for writ of mandate seeking permission to appeal, immediately held a termination hearing, thereby foreclosing father from following the procedure requiring a petition for a writ of mandate for permission to file an appeal.

The existence of a waiver is a federal issue subject to *de novo* review in this court. *Generally*, *Ake v. Oklahoma*, 470 U.S. 68 (1985).

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[5] *Boykin v. Alabama*, 395 U.S. 238 (1969), In re Tahl, 1 Cal.3d 122 (1969), Goldberg v. Kelly, 397 U.S. 254.

[6] As this is a rule based on constitutional construction, the Legislature cannot overrule it. *See generally*, *Dickerson v. United States* (2000) 530 U.S. 428 (2000).

There is thus an important issue of procedural law that would amount to a waiver, which this court ought to resolve at this time.

XII. QUESTION SEVEN: COURT'S VIOLATION OF *MLB v. SLJ*, 519 U.S. 102

A. No known adverse case law

This court held, and California stare decisis is consistent with that holding, that fairness and justice require that a court look at both sides of the issue, and where the court dwells at length on a party's conduct, and ignoring the other party's conduct, the decision is unreasonable. *M. L. B. v. S. L. J.*, 519 U.S. 102 (1996)), and the state analog *In re Marriage of McGinnis* (1992) 7 Cal.App.4th 473

In this case the important issue of law is raised because the court dwelled at length on Father's conduct in a onetime corporal punishment act without serious bodily injury, ignoring the conduct of the child in defiance of school authority, parental authority, and court authority, and continually denying father access to relevant evidence and due process to transfer sole physical custody of an absent mother who had not seen the child in 10 years, and admittedly only about a year out of a lifetime of drug addiction.

ARGUMENT IN SUPPORT OF TO CERTIORARI

ISSUE ONE THE MOST DESIRABLE METHOD OF HANDLING THE PROBLEMS OF

CONCURRENT CRIMINAL AND JUVENILE PROCEEDINGS INVOLVING THE SAME MINOR IS FOR THE JUVENILE PROCEEDINGS TO BE STAYED UNTIL AFTER DISPOSITION OF THE RELATED CRIMINAL PROCEEDINGS

The State already recognizes that where a person is being violated on parole, on new charges pending in criminal courts, that parole revocations charges ought to be stayed. *People v. Jasper* (1983) 33 Cal.3d 931, 935.

In this case, all of the evidence, necessary to defend the criminal charges were necessary and proper for a defense, and discoverable by this court's precedence in *Davis v. Alaska*, 415 U.S. 308 (1974), 319-320, yet the state delayed the criminal case, and refused to disclose in the juvenile proceedings, in violation of fundamental fairness in an adversary proceeding, access to evidence. Rotunda, et al., 2 Treatise on Constitutional Law: substance and procedure, pp. 644, 645, § 17.8; *St. Louis v. Praprotnik*, 485 U.S. 112 (1988) (Employment denial of "due process"; due process not defined,); *Opp Cotton Mills v. Administrator of W. and H.D.*, 312 U.S. 126 (1941) (The demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding so long [312 U.S. 126, 153] as the requisite hearing is held before the final order becomes effective.)

As it turns out, Father did not get an evidentiary hearing, and his child taken, it appears, without due process, in a case wherein the conduct of the child, and the absent mother, were wholly ignored. M. L B., *passim M. L. B. v. S. L. J.*, 519 U.S. 102 (1996)),

and the state analog *In re Marriage of McGinnis* (1992) 7 Cal.App.4th 473

From the foregoing, there was a lack of fundamental fairness in the proceedings, such that it appears that the State in bringing both a juvenile dependency proceeding was using Star Chambers tactics, *Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990, and this court should grant *certiorari*, and on the merits, roundly disapprove the procedure.

ISSUE TWO: A PARENT DOES HAVE THE RIGHT TO USE REASONABLE CORPORAL PUNISHMENT WHEN THE MINOR IS IN APPARENT REBELLION AGAINST PARENTAL AUTHORITY, SCHOOL AUTHORITY, AND JUDICIAL AUTHORITY

This Court has long held that a parent has the right to use corporal punishment, so long as reasonable. *Ingraham v. Wright* (1977) 430 U.S. 651 [Common law right]. See also, *Stanley v. Illinois*, 405 U.S. 645 (1972) (Termination of parental rights); *Mattis v. Schnar*, 502 F.2d 588 (8th Cir. 1974), *vacated* and *remanded sub nom Ashcroft v. Mattis*, 431 U.S. 171; *Santosky v. Kramer* (1982) 455 U.S. 745; *Brower v. County of Inyo*, 489 U.S. 593 (1989).

From the record below, it was clear that the child was in full rebellion against school authorities, not doing her homework, and other offenses at school. Father was concerned because she refused to do her share of chores. The defiance was adequately corroborated not just by the school record, but also her defiance of judicial authority by running away from juvenile placement.

Given the "plea" unable to control his daughter, the courts were unreasonable in withholding evidence, and refusing to look at the daughter's deportment, and the fitness of the mother, a recovering addict.

Thus this court ought to grant certiorari, review the case, and grant father relief.

ISSUE THREE: A PARENT, IN A CHILD ABUSE CASE, DOES HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL IN A JUVENILE PROCEEDING UNDER EITHER THE CALIFORNIA CONSTITUTION, ART I, SECTION 16, OR THE U.S. CONSTITUTION, 7TH AMENDMENT AS APPLIED BY THE 14TH AMENDMENT

In Keiver *v. Pennsylvania* (1979) (1979) 403 U.S. 528 the court found no right to a jury trial under the 6th Amendment because the real parties were minors and the case was not of a criminal nature. With all due respect for the solicitude of the legislature for minors, in a § 300 hearing Minors' cases, they are only nominal parties. The real parties, the people who stand to lose a 1st Amendment right are the parents. *Santosky v. Kramer* (1982) 455 U.S. 745; *Brower v. County of Inyo*, 489 U.S. 593 (1989). Therefore the U.S. Const.,

7th Amendment,[7] or California Const. Art. I, section 16,[8] right to jury is clearly a right that cannot be

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7 All of the States have a constitutional requirement for civil Jury trials. Appendix. "[The U.S. Supreme] Court has ... declared that due process of law is denied if a trial is conducted in such manner that it is 'shocking to the universal sense of justice' or 'offensive to the common and fundamental ideas of fairness and right.' On another occasion th[e] Court has recognized that whatever is 'implicit in the concept of ordered liberty' and 'essential to the substance of a hearing' is within the procedural protection afforded by the constitutional guaranty of due process. [Cites omitted.] fundamental to an ordered system of liberty." *Betts v. Brady*, 316 U.S. 455, 475 (1942))

8 "Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. **In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.** In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes in municipal or justice court the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court. In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

The right to a jury under California Const., Art. I, section 16 is a substantive right protected by the 14th Amendment due process clause. *Generally, Griswold v. Connecticut* (1965) 381 U.S. 479.

denied because the amount in controversy is surely greater than $20.00.[9]

The earliest constitutional document requiring a trial by jury was the *Magna Carta*.[10] Bernard Schwartz,[11] The Bill of Rights: A Documentary History; McKechnie, Magna Carta: A Commentary on the Great Charter of King John.[12] In the case of

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[9] To the extent that protection of the minor from public disclosure is concerned, a jury trial does not undermine that goal. Grand juries meet, their deliberations are secret; yet they function primarily because they are not fact finders, but probable cause finders. A jury in a juvenile case could well be admonished that they are not to discuss with anyone the facts of the case once they are discharged.

[10] With the sole exception to a trial by jury, a juvenile has all those rights enjoyed by an adult charged with a crime. Richard N. v. Superior Court, 116 Cal.App.3d 579 (1981); Dickerson v. United States, 530 U.S. 428 (2000) ; (speedy trial); In re Glen J., 97 Cal.App.3d 981 (1979) (witnesses); In re Harris, 67 Cal.App.2d 876 (1967) (counsel); In re Anthony H., 138 Cal.App.3d 159 (1982) (double jeopardy); In re Gault, 387 U.S. 1 (1962) (self-incrimination); Matter of Aaron N., 70 Cal.App.3d 931 (1977) (due process); generally, In re Winship, 397 U.S. 358 (1970).

[11] Schwartz is a recognized scholar on the bill of rights. Constitution of the United States of America\: Analysis and Interpretation (1992) U.S. Senate Document No. 103-6, p. 1452, fn. 6.

[12] Recognized scholar on *Magna Carta*. 6 Halsbury's Statutes of England (3rd Ed), Constitutional Law, 25 Edw. 1 (Magna Carta) (1297), fn. 1, Appendix. (http://www1.lexisnexis.co.uk/hssi/faq.htm).

Munday v. Vaughn, 21 Viner Abrg2nd 37 (1793) it was adjudged "If membership is disputed in an action if defendant claims his privilege because he is a scholar of the University of Oxford, of such college or hall, and the parties are at issue whether he be of the college or hall, this shall not be tried by the certificate of the V-C[13] and the principal of the college or hall[14] but it shall be tried *per pais*.[15]

As an early expression of the meaning of the right to a jury, it is clear that right encompassed the right to have a jury of one's peers determine whether or not one had a right of membership in an important institution. Surly, where one's right to liberty, vis. association with free persons everywhere, that issue ought *a fortiorari* be decided by a jury, and its ultimate responsibility ought not to be shifted or diluted by reference to what some person or institution ought or may do at some future point in time.

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[13] Vice Chancellor sitting as a visitor.

[14] It appears from the literature that these two would sit as modern day administrative law judges in an administrative proceeding. However, as *Munday* makes clear, certain issues could not be tried "at bench."

[15] Trial by country; i.e., by jury. Black's Law Dictionary (Rev. 4th ed., 1968) p. 1293.

Under the U.S. Constitution, the 6th & 7th,[16] as made applicable by the 14th, amendments, preserve a right to trial by jury in civil cases. While it is true the U.S. Supreme Court in *Keiver v. Pennsylvania* (1979) 403 U.S. 528 held that a Minor had no 6th Amendment right to a trial by jury, it has never held that the 7th is not applicable. Nor could it. From the time of the inception of the 7th Amendment, it was always understood that the function of the 7th Amendment was to prevent the government from reclassifying a proceedings as Civil to avoid the requirements of the 6th Amendment. *Bayard v. Singleton* (1787) 1 Martin (N. Carolina) 42; B. Schwartz, The Bill of Rights: A Documentary History. Even the California Supreme Court recognizes that a Minor cannot be denied a trial by jury in at least serious cases which are complex. *People v. Superior Court* (*Carl D.*) (1975) 15 C.3d 271.

Indeed, under both the California [Art. I, § 16] and the United States [6th & 7th Amendments] Constitutions, only two types of trials are recognized:

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[16] In *Minneapolis & St. Louis R.R. Co. v. Bombolis* (1916) 241 U.S. 211, 36 S.Ct. 595, 60 L.Ed. 961, held that the 7th Amendment was not applicable to the States. However, since that decision in 1916, there has been a steady retreat from the concept that the Bill of Rights did not apply, to one of "selective incorporation", until by 1980 in *Webb's Fabulous Pharmacies, Inc. v. Beckwith* (1980) 449 U.S. 155, the Court has recognized nearly ever other feature, and to be applied with the same force against States as against the Federal Government. 2 Rotunda, Constitutional Treatise § 15.6 (1992 ed) , particularly the footnotes.

Criminal; Civil. The juvenile process is one or the other, but whichever, the Father has a right to a trial by jury.

This case is a classic example of the whole point of the 7th Amendment, to prevent a circumvention of 4th through 6th Amendment rights by resort to a "civil" proceeding in the guise of protecting the minor.

The court should grant certiorari and reconsider this important issue involving the right to a jury in civil matters where a fundamental right is at stake.

ISSUE FOUR: THE COURT BELOW DID ABUSE ITS DISCRETION IN REFUSING TO DISCLOSE THE BIRTH RECORDS OF THE MINOR AND MOTHER WHERE THERE WAS SUBSTANTIAL EVIDENCE THAT MOTHER WAS UNDER THE INFLUENCE OF DRUGS AT THE TIME OF BIRTH

[A defendant/Father]'s right of confrontation is paramount to the State's policy of protecting juvenile[s] ... and any temporary embarrassment to [others] ... by disclosure of ... juvenile court records and probation status is outweighed by [defendant]'s right effectively to cross-examine a witness. *Davis v. Alaska* (1974) 415 U.S. 308, 319-320.

The right to due process, including confrontation is not limited to criminal cases; it extends to even administrative proceedings. *Goldberg v. Kelly*, 397

U.S. 254, 261-262 (1970).[17] *Followed in Clemons v. Mississippi*, 494 U.S. 738 (1990) (Capital sentencing.)

The court contemplated examining the child in the § 300 case out of the presence of the father. CT, p. 105 (Minor's Motion). As noted above, and below, father has a right to due process to protect his relationship with his child. In criminal proceedings, the child would have to testify with father present. If it is the intent to get the child's testimony out of the presence of the father, then present that evidence at the criminal proceeding on a claim of unavailability, or other privilege, that would be fundamentally akin to *Coleman*, and unfair to Father in this case because it denies him the right to confrontation. *Goldberg, supra.*

Thus there is involved an important federal issue: the rights of a Father to information about his daughter (*Ayotte v. Planned Parenthood of N. New England*, 546 U. S. 320 (2006) (New Hampshire Parental Notification Statute) and loss of custody of a child, *M.L.B. passim*, which is critical for her treatment, and for fathers defense.

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[17] "(a) Such hearing need not take the form of a judicial or quasi-judicial trial, but the recipient must be provided with timely and adequate notice detailing the reasons for termination, and an effective opportunity to defend by confronting adverse witnesses and by presenting his own arguments and evidence orally before the decision maker." Surely, the terminating of a parent-child relationship is as important as terminating one's benefits.

Moreover, the procedure would offend confrontation in criminal proceedings. *See generally, Douglas v. Alabama* (380 US 415 (1965); *Bruton v. United States* 391 U.S. 123 (1968); *Coy v. Iowa* (1988) 487 U.S. 1012 (Use of screen at trial between complaining child witness and the defendant).

Thus, the court below should have trailed the juvenile proceedings pending resolution of the criminal proceedings.

ISSUE FIVE: THE COURT DID ABUSE WHEN, NOTWITHSTANDING THE "PLEA AGREEMENT" IT PERSISTED IN HOLDING FATHER SOLELY RESPONSIBLE, IGNORING THE CONDUCT OF THE MINOR AND MOTHER

The Trial Court Petition was amended to read:

b- 1. Minor has reported being hit by her father with a belt on more than one occasion; father denies this constituted abuse. Appendix, p. A26.

b-2. Father states that he is unable to control the minor or meet the minor's needs. Ibid

The Court sustained the allegations of the amended petition, and found the child to be a minor. The sole issue before the court, however, was whether the Minors Conduct was such that father was unable to control her conduct and what remedies were required. Ante, p. 3. Appendix, p. A26.

The petition was not, and could not be used to sustain a finding that he abused the child because it would be tantamount to a violation of Father's *Boykin-Tahl Rights. People v. Delles* 69 Cal.2d 906, 910 (1968, *citing Boykin v. Alabama*, 395 U.S. 238 (1969), *In re Tahl*, 1 Cal.3d 122 (1969, as made applicable by *Goldberg v. Kelly*, 397 U.S. 254

Yet the Court and county counsel insisted:

"Ms. STOLTZ: I am not sure the relevance of all this. The issues have to do with inappropriate physical discipline of the minor. We keep arguing with fetal alcohol or drug syndrome, as that somehow would excuse hitting the minor.[18] RT 2:11-15.

"The Respondent claims that "On June 13, 2007, after lengthy discussion with the Court, the father withdrew his request for a contested disposition hearing. (RT. pp. 2-13.)" ROB, p. 4, first full paragraph. The problem with the claim is that it cites us to 11 pages to seek this so called withdrawal. Appellant insisted on his right to discipline. RT 2:16-21. Insisted there was a factual dispute regarding a defense." RT 2:23-28, RT 3:2-10.

Thus is presented an important issue as to waiver of those issues found by the court below. The existence of a waiver is a federal issue subject to *de novo* review in this court. *Generally, Ake v. Oklahoma,* 470 U.S. 68 (1985)

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[18] "(C) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available."

ISSUE SIX: THE TRIAL COURT DID VIOLATE ZIMMERMAN, WHEN IT RULED ON THE ISSUE OF REUNIFICATION, THEN IMMEDIATELY RULING ON THE CUSTODY ISSUES, CUTTING OFF PETITIONER'S RIGHT TO PETITION FOR LEAVE TO APPEAL WITHOUT THE 10 DAYS IN WHICH TO DO SO

On concluding the unification of services hearing, the court found a failure of reunification services and then ordered an immediate termination hearing, thus cutting off Father's ability, within 10 days of the order terminating reunification services, to petition for a writ of mandate for permission to file an appeal. Cal. Welfare & Institutions Code, §

This court has held, *Logan v. Zimmerman* (1982) 55 U.S. 422, and it appears to be clearly established law, that a state process which arbitrarily cuts off the rights of a litigant based solely on time violates due process of law. The appellate court, notwithstanding found a waiver of the right to appeal.

The question of waiver is reviewed in this court *de novo*, *Ake v. Oklahoma*, 470 U.S. 68 (1985), therefore the court should grant review of this important question, and reverse.

ISSUE SIX: IN LIGHT OF *MLB v. SLJ*, 519 U.S. 102, THE COURT DID ABUSE ITS DISCRETION IN TRANSFERRING CUSTODY

This court held in *MLB v. SLJ*, 519 US 102, that it was an abuse and denied mother access to the courts based on poverty to dwell at length on Mother's problems, without looking at the conduct of Father.

In this case, the roles are reversed, but rather than poverty, the Courts bellowed ignored the due process

rights of the father to deny him access to evidence, accepted his plea on an amended petition that he denied wrong doing, but admitted he was unable to control his daughter's conduct, the daughter had been a chronic problem at home, at school, and failed or refused to obey court orders for her conduct and place, to transfer sole custody to Mother, who did not appear in the action below, had not seen her daughter is over 10 years, paid no child support, and was a recovering addict out of recovery less than 2 years.

The decision below does not even follow California Precedent. See e.g., *In re Marriage of McGinnis* (1992) 7 Cal.App.4th 473, 479.

The court should grant certiorari and reverse.

CONCLUSION

For the reasons stated above, the Court should grant the instant petition and order briefing and argument on the case in this Court.

Dated: April 10, 2009

RESPECTFULLY SUBMITTED,

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APPENDIX

Right to Jury By State	
State	Citation & Provision Of Const.
Alabama	**Art. I, Declaration of Rights;** **Section 11 Right to trial by jury** That the right of trial by jury shall remain inviolate.
Alaska	**Art. I, Declaration of Rights;** **§ 16. Civil Suits; Trial by Jury** In civil cases . . . . the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. . . . .
Arizona	**Art. 2. Declaration of Rights** Section 23 Trial by jury; number of jurors specified by law The right of trial by jury shall remain inviolate. Juries in criminal cases . . . . . In all other cases, the number of jurors, ... and the number required to render a verdict, shall be specified by law.
Arkansas	**Art 2. Declaration of Rights.** **§ 7. Jury trial - Right to - Waiver - Civil cases - Nine jurors agreeing** The right of trial by jury shall remain inviolate, and shall extend to all cases at law, . . . and in ... in civil cases, . . [As amended]
California	ARTICLE 1. DECLARATION OF RIGHTS; Sec. 16. **[Trial by Jury]** Trial by jury is an inviolate right and shall be secured to all, but in a civil cause

	three-fourths of the jury may render a verdict. . . .In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute. * * * * *.
Colorado	Art. II Bill of Rights. Sec. 23. Trial by jury – grand jury The right of trial by jury shall remain inviolate . . . . but a jury in civil cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve persons, as may be prescribed by law. * * * * *.
Connecticut	Article First – Declaration of Rights SEC. 19. [Jury Trial] [See: Sec. 8 criminal prosecutions] The right of trial by jury shall remain inviolate.
Delaware	Art. 1. Bill of Rights, § 4. Trial by jury. [See also, §§ 5 & 7 – Jury] Trial by jury shall be as heretofore.
Florida	Art. I, Declaration of Rights, SEC. 22. Trial by jury. The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.
Georgia	ARTICLE I. BILL OF RIGHTS, SEC. I. RIGHTS OF PERSONS Paragraph XI.. Right to trial by jury; number of jurors; selection and compensation of jurors.

	(a) The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party. * * * * * .
Hawaii	Art. I. Bill of Rights. Section 13. Trial By Jury – Civil Cases In suits at common law where the value in controversy shall exceed five thousand dollars, the right of trial by jury shall be preserved. ...
Idaho	Art. I. Declaration of Rights, Sec. 7 Right to trial by jury. The right of trial by jury shall remain inviolate; but in civil actions, three-fourths of the jury may render a verdict, . . .
Illinois	Art. I, Bill of Rights. SEC. 13. TRIAL BY JURY Also: §§ 8 (Criminal) & 15 Imminent Domain) The right of trial by jury as heretofore enjoyed shall remain inviolate.
Indiana	Art. I Bill of Rights Section 20. [Civil Trials – Jury] In all civil cases, the right of trial by jury shall remain inviolate.
Iowa	Art. I. Bill of Rights. § 9. Right of trial by jury - due process of law. [See section 10 for juries in criminal

	prosecutions] The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by jury of a lessor number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.
Kansas	Bill of Rights. **[Sec.]** 5. Trial by jury. [See 10. Juries in criminal prosecution] The right of trial by jury shall be inviolate
Kentucky	**Bill of Rights.** **Section 7 Right of trial by jury.** **[See Sec. 11 for juries in criminal prosecution]** The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution
Maine	**Art. I, Declaration of Rights.** **Section 20. Trial by jury** In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced; the party claiming the right may be heard by himself or herself and with counsel, or either, at the election of the party.
Maryland	**Declaration of Rights,** **Article** 5 (a)(1) That the Inhabitants of Maryland are entitled to the Common Law of

	England, and the trial by Jury, according to the course of that Law, ... * * * * *.
Massachusetts	Part The First. *A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts,* Article XV. [See also Articles VII & VIII for criminal proceedings.] In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.
Michigan	Art. I, Declaration of Rights. § 14 Jury trials The right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law. In all civil cases tried by 12 jurors a verdict shall be received when 10 jurors agree
Minnesota	Art. I, Bill of Rights; Sec. 4. TRIAL BY JURY. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner

	prescribed by law. . . . .
Mississippi	**Art. #3, Bill of Rights** **Section 31. Trial by jury.** The right of trial by jury shall remain inviolate, but the legislature may, by enactment, provide that in all civil suits tried in the circuit and chancery court, nine or more jurors may agree on the verdict and return it as the verdict of the jury.
Missouri	**Art. I. Bill of Rights,** **Section 22(a). Right of trial by jury--qualification of jurors--two-thirds verdict.** That the right of trial by jury as heretofore enjoyed shall remain inviolate; provided that a jury for the trial of criminal and civil cases in courts not of record may consist of less than twelve citizens as may be prescribed by law, and a two-thirds majority of such number concurring may render a verdict in all civil cases; that in all civil cases in courts of record, three-fourths of the members of the jury concurring may render a verdict; . . . ..
Louisiana	**Art. I, Declaration of Rights,** **§ 4(B)(5) Property Rights** **[See also: § 14. Grand Jury; §§ 16 & 17 . Criminal Cases.]** In every expropriation or action to take property pursuant to the provisions of this Section, a party has the right to trial by jury to determine whether the

	compensation is just, and the owner shall be compensated to the full extent of his loss. Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.
Montana	**Art. II, Declaration of Rights** **Section 26. Trial By Jury.** **See also: Sec. 20 Grand Jury; Sec. 25. Criminal Cases.** The right of trial by jury is secured to all and shall remain inviolate. But upon default . . . . In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.
Nebraska	[Art. I. Bill of Rights] **Article I-6 Trial by jury.** The right of trial by jury shall remain inviolate, but the Legislature may authorize trial by a jury of a less number than twelve in courts inferior to the District Court, and may by general law authorize a verdict in civil cases in any court by not less than five-sixths of the jury.
Nevada	ARTICLE. 1. - Declaration of Rights, Sec: 3. Trial by jury; waiver in civil cases.

	The right of trial by Jury shall be secured to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law; . . . .
New Hampshire	**Bill of Rights,** **[Art.] 20 [Jury Trial in Civil Causes.]** In all controversies concerning property, and in all suits between two or more persons except those in which another practice is and has been customary and except those in which the value in controversy does not exceed $1,500 and no title to real estate is involved, the parties have a right to a trial by jury. This method of procedure shall be held sacred, unless, in cases* arising on the high seas and in cases relating to mariners' wages, the legislature shall think it necessary hereafter to alter it.
New Jersey	**Art. I. Rights and Privileges.** **[§] 9. [Trial by Jury] See also: [§] 8. Grand jury; [§] 10 Criminal proceedings.** The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons. . . . .
New Mexico	**Article II – Bill of Rights, Sec. 12.** **[Trial by jury; less than unanimous verdicts in civil cases.]** The right of trial by jury as it has heretofore existed shall be secured to all

	and remain inviolate. In all . . . .civil cases may be rendered by less than a unanimous vote of the jury.
New York	Art. I. Bill of Rights. § 2. [Trial by jury; how waived] Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law. * * * * *
North Carolina	Article I. Declaration Of Rights, Sec. 25. Right of jury trial in civil cases. In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.
North Dakota	Art. I. Declaration of Rights. Section 13. [See also: Sec. 4, Speech and Publication Sec. 10. Grand Jury; Sec. 16. Eminent Domain.] The right of trial by jury shall be secured to all, and remain inviolate. A person accused of a crime for . . . The legislative assembly may determine the size of the jury for all other cases, provided that the jury consists of at least six members. All verdicts must be unanimous.
Ohio	Art. I. Bill of Rights. § 1.05 Trial by jury (1851, amended 1912)

	The right of trial by jury shall be inviolate, ... in civil cases, ...
Oklahoma	**Art. II, Bill of Rights.** **SECTION II-19 Trial by jury.** The right of trial by jury shall be and remain invio-late, except in civil cases wherein the amount in controversy does not exceed One Thousand Five Hundred Dollars ($1,500.00), * * * * *.
Oregon	**Art. I. Bill of Rights.** **Section 17. Jury trial in civil cases.** In all civil cases the right of Trial by Jury shall re-main inviolate.
Pennsylvania	**Article 1 Declaration Of Rights** **Section 6. Trial by Jury** Trial by jury shall be as heretofore, and the right thereof, remain inviolate. The General assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.
Rhode Island	**ARTICLE I Declaration Of Certain Constitutional Rights And Principles** **Section 15. Trial by jury. --** The right of trial by jury shall remain inviolate. In civil cases the general assembly may fix the size of the petit jury at less than twelve but not less than six
South Carolina	**ARTICLE I. Declaration Of Rights** **SEC. 14. Trial by jury; witnesses; defense.** The right of trial by jury shall be presser-

	ved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; . . . .
South Dakota	**ARTICLE VI Bill Of Rights** **Sec. 6. Jury trial-Reduced jury-Three-fourths vote** The right of trial by jury shall remain inviolate and shall extend to all . . . . civil cases . . . .
Tennessee	**Article I. Declaration of Rights.** **Sec. 6. Trial by jury — Qualifications of jurors.** **[See Sec. 9 for Criminal Prosecutions.]** That the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors.
Texas	**Art. I. Bill of Rights.** **Sec. 15. RIGHT OF TRIAL BY JURY.** **[See Sec. 10 for Criminal Prosecutions.]** The right of trial by jury shall remain inviolate. . . . .
Utah	**Article I. Declaration of Rights.** **Section 10. [Trial by jury.]** * * * * * In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.
Vermont	***CHAPTER I. A Declaration Of The Rights Of The Inhabitants Of The State Of Vermont*** **Art. 12. [Trial by jury to be held sacred]** That when any issue in fact, proper for

	the cognizance of a jury is joined in a court of law, the parties have a right to trial by jury, which ought to be held sacred.
Virginia	ARTICLE I. Bill of Rights Section 11. Due process of law; . . . jury trial in civil cases. * * * * * That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. . . . .
Washington	ARTICLE I DECLARATION OF RIGHTS SECTION 21 TRIAL BY JURY. The right of trial by jury shall remain inviolate, . . . in civil cases
West Virginia	Art. 3. Bill of Rights Sec. 3-13. Right of jury trial. In suits at common law, where the value in controversy exceeds twenty dollars exclusive of interest and costs, the right of trial by jury, ..., ...shall be preserved; . . .
Wisconsin	Article I, Declaration of Rights §5 Trial by jury; verdict in civil cases. The right of trial by jury shall remain inviolate, . . . in civil cases, ...
Wyoming	Art. I Declaration of Rights. Sec. 9. Trial by jury inviolate. The right of trial by jury shall remain inviolate . . . in civil cases . . . *****

NOT TO BE PUBLISHED

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re O.C., a Person Coming Under the Juvenile Court Law	C058117 (Super. Ct. No. JV06688)
YOLO COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES, Plaintiff and Respondent, v. TIM C.., Defendant and Appellant.	

Tim C. (Appellant), the father of 0. C, (the minor), appeals from orders of the juvenile court awarding custody of the minor to the mother and terminating its jurisdiction over the minor. (Welf. & Inst. Code, §§ 366.21, subd. (f), 395; further undesignated statutory references are to the Welfare Institutions Code.) Appellant, proceeding in propria persona, makes multiple contentions of alleged prejudicial

error. For the reasons that follow, we shall affirm the juvenile court's orders.

[1]

FACTUAL AND PROCEDURAL BACKGROUND

On October 17, 2006, Yolo County Department of Employment and Social Services (DESS) filed an original juvenile dependency petition pursuant to section 300 on behalf of the then nearly 12-year-old minor. That petition, as amended, alleged appellant struck the minor with a belt, and averred that appellant was unable to control the minor or meet the minor's needs. The petition also alleged the minor's mother's whereabouts were unknown.

The minor had lived with appellant. DESS placed her in a Yuba County foster home. On April 27, 2007, the juvenile court sustained the petition as amended. Thereafter, the minor ran away from her placement and was located in Oklahoma with her mother. DESS began an evaluation of the mother to determine her suitability for placement of the minor.

At the disposition hearing, the juvenile court adjudged the minor a dependent child and ordered appellant to participate in a reunification plan. The juvenile court denied appellant's motion to continue the disposition hearing until a criminal proceeding against appellant was resolved. Appellant also sought a jury trial, and requested the minor's medical records. As to the latter matter, the juvenile court dropped it from the court's calendar after both counsel for appellant and appellant failed to appear.

In its December 2007 status review report, DESS recommended termination of reunification services.

According to DESS, it had received no information as to appellant's compliance with

[2]

the court-ordered case plan. DESS was continuing to evaluate the minor's mother for placement. It noted the minor appeared to be doing well in her mother's custody. Finally, DESS opined that returning the minor to appellant would create a substantial risk of detriment to the well-being of the minor.

At the December 12, 2007, 12-month review hearing, counsel for DESS advised the juvenile court the minor was doing well in the custody of her mother. According to counsel, although the mother had "a very troublesome past," she was engaged in services and had not used illegal drugs in the past year. DESS recommended that the minor remain with her mother.

Counsel for appellant argued that placement of the minor in Oklahoma with her mother was not in the minor's best interests. Counsel again requested production of the minor's medical records, on the ground they might support the proposition that appellant's actions had been reasonable due to the minor's physical condition. The juvenile court denied appellant's request. Appellant's counsel also argued that permitting the minor to go to and remain in Oklahoma violated appellant's procedural due process rights.

At the conclusion of the review hearing, the juvenile court awarded sole physical and legal custody of the minor to the minor's mother in Oklahoma, and terminated its jurisdiction over the minor.

[3]

DISCUSSION

I

Appellant contends the juvenile court abused its discretion in refusing to stay the dependency proceedings pending resolution of the criminal proceedings against him. Appellant's claim is not cognizable in this appeal. "An appeal from the most recent order entered in a dependency matter may not challenge prior orders, for which the statutory time for filing an appeal has passed." (*In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 563.) Here, at the disposition hearing the juvenile court denied appellant's motion to stay the criminal proceeding. Thus, appellant should have made the claim he states here, which relates to that prior order, in an appeal following the disposition hearing. (§§ 360, 395.)

II

Appellant asserts a right to use appropriate corporal punishment. He made an identical claim in argument filed the day of the 12-month review hearing, whose orders are the subject of this appeal.

The claim fails because it is irrelevant to issues at the 12-month review hearing. (§ 366.21, subd. (f).) Appellant should have tendered the claim in an appeal following the disposition hearing. (§§ 360, 395.) It is too late now.

III

Appellant argues the juvenile justice system is unconstitutional, and claims the right to a jury trial in dependency proceedings.

4

As to the latter claim, in dependency proceedings no such right exists. (Cal. Rules of Court, rule 5.682(b)(1) .) Regarding the juvenile dependency system, appellant did not tender any challenge to the system in the juvenile court. The record reflects appellant had ample opportunities to bring that issue to the attention of the juvenile court, if he had wished to do so.

Although ordinarily waiver constitutes the "intentional relinquishment of a known right," traditionally waiver also was found from conduct that reasonably could be construed as the equivalent of an abandonment of that right. (*Cf. Rubin v. Los Angeles Fed. Say. & Loan Assn.* (1984) 159 Cal.App.3d 292, 298.) Alternatively, "[u]nder the doctrine of invited error, where a party, by his conduct, induces the commission of an error, he is estopped from asserting it as grounds for reversal." (*Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 166.)

As has been noted in dependency decisions, if waiver or invited error were not found, a party could "trifle with the courts by standing silently by, thus permitting the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable." (In re Urayna L. (1999) 75 Cal.App.4th 883, 886.)

The California Supreme Court stated the rule this way: "`An appellate court will ordinarily not

consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been, but

[5]

was not presented to the lower court by some appropriate method . . . . The circumstances may involve such intentional acts or acquiescence as to be appropriately classified under the headings of estoppel or waiver . . . . Often, however, the explanation is simply that it is unfair to the trial judge and to the adverse party to take advantage of an error on appeal when it could easily have been corrected at the trial.' [Citation.]" (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1.) "`The purpose of the general doctrine of waiver is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had . . . .`" (*People v. Walker* (1991) 54 Cal.3d 1013, 1023.) ""No procedural principle is more familiar to this Court than that a constitutional right," or a right of any other sort,

"may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." [Citation.]' [Citation.]" (*People v. Saunders* (1993) 5 Cal.4th 580, 590, fn. omitted; cf. In re S..B. (2004) 32 Cal.4th 1287, 1293, fn. 2 [holding that correct legal term for loss of right based on failure to assert it in a timely fashion is forfeiture, not waiver].)

Here, as we have seen, appellant tendered no challenge to the constitutionality of the dependency system. Whether denominated estoppel, waiver, or forfeiture, appellant's conduct in the juvenile court precludes him from raising the issue here. (In it Erik P. (2002) 104 Cal.App.4th 395, 403; In it Dakota S.

[6]

(2000) 85 Cal.App.4th 494, 501-502; In re Gilberto M. (1992) 6 Cal.App.4th 1194, 1198-1200.)

IV

Appellant claims the juvenile court abused its discretion in refusing to order production of the

minor's medical records. The juvenile court denied his request after it had ordered dismissal of the dependency proceedings.

As the argument of appellant's counsel made clear, Appellant wanted the minor's records primarily to support his theory that his actions were justified in attempting to address the minor's behavior difficulties. Even assuming the records were relevant to reunification and the review hearing, we agree with the juvenile court's conclusion that the request made at that hearing was untimely, as the record shows the court already had dismissed the dependency proceedings. There was no error.

V

Appellant's final contention is that the juvenile court abused its discretion in awarding custody of the minor to the minor's mother in Oklahoma.

Section 361.2 establishes the procedures a court must follow for placing a dependent child following removal from the custodial parent pursuant to section 361. (In re Marquis D. (1995) 38 Cal.App.4th 1813, 1820.) when a court orders removal of a minor under section 361, the court first determines whether there is a parent who wants to assume custody who was not residing with the minor at the time the events that brought the minor within the provisions of section 300 occurred. (5 361.2,

[7]

subd. (a).) "If that parent requests custody, the court shall place the child with the parent unless

it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (5 361.2, subd. (a)., italics added.) The juvenile court must make the detriment finding by clear and convincing evidence. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 700.)

"[A] nonoffending parent has a constitutionally protected interest in assuming physical custody, as well as a statutory right to do so, in the absence of clear and convincing evidence that the parent's choices will be `detrimental to the safety, protection, or physical or emotional well-being of the child.' (Citation.]." (In it Isayah C., supra, 118 Cal.App.4th at p. 697.) It is not the nonoffending parent's burden to show that she is capable of caring for her child. Rather, it is the party opposing placement who has the burden to show by clear and convincing evidence that the child will be harmed if the nonoffending parent is given custody.

Here, the juvenile court did not find that placement of the minor with her mother would result in detriment to the minor. Accordingly, properly framed, the issue is whether the evidence before the juvenile court compelled a finding, by clear and convincing evidence, that placement with the minor's mother would be detrimental to the safety, protection, or physical or emotional well-being of the minor. It did not. In fact, at the review hearing, appellant proffered no evidence in the form of

testimony on the issue of detriment. Moreover, appellant's

[8]

written argument, filed on the day of the review hearing, noted only that around the time of the minor's birth, 13 years ago, the mother was using illegal drugs.

When a juvenile court transfers custody to the noncustodial parent pursuant to section 361.2, it can terminate jurisdiction if it finds ongoing supervision is no longer necessary. (§ 361.2, subd. (b) (1);[19] In

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[19] Section 361.2, subdivision (b), provides the court with three alternatives at disposition when a child is placed with the noncustodial parent. The court may; "(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. . . . [~j] (2) Order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months. . . . After the social worker conducts the home visit and files his or her report with the court, the court may then take the action described in paragraph (1), (3), or this paragraph. . . . [if] (3) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child."

re Austin p. (2004) 118 Cal.App.4th 1124, 1135.) The juvenile court's discretion to terminate jurisdiction or continue its supervision is very broad. (In re Nada R. (2001) 89 Cal.App.4th 1166, 1179.) The exercise of such discretion will not be disturbed on appeal absent an abuse of discretion. (In re Sarah M. (1991) 233 Cal.App.3d 1486, 1496,

[9]

disapproved on other grounds in In re Chantal S. (1996) 13 Cal.4th 196, 204.)

In this case, the juvenile court did not abuse its discretion by granting custody to the minor's mother and terminating jurisdiction. There simply was no evidence, other than a bare assertion of drug abuse 13 years earlier, to compel any finding that placement with the minor's mother would be detrimental to the minor.[20] In sum, appellant failed to carry his evidentiary burden.

Finally, we reject appellant's assertion in his brief, also made at the review hearing, that the minor was in Oklahoma without appellant having the opportunity to challenge the circumstances surrounding her relocation. Appellant could have requested a contested hearing on the matter, or might have sought a continuance of the review

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[20] For purposes of resolving the claim, we presume that appellant has a sufficient legal interest, or standing, to make an abuse of discretion argument, based on an interest in having the minor returned to his custody.

hearing. He did neither. It is too late to raise the issue now.

DISPOSITION

The orders are affirmed.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

BUTZ, J.

[10]

Court of Appeal, Third Appellate Dist. No. C058117

S168830

IN THE SUPREME COURT OF CALIFORNIA
En Banc

In re O. C.. a Person Coming Under the Juvenile Court Law

YOLO COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES, Plaintiff and Respondent,

v.

T. C., Defendant and Appellant..

The petition for review is denied.

George, C.J., was absent and did not participate.

SUPREME COURT
FILED
JAN 14 2009
Frederick K. Ohlrich Clerk
Deputy

CORRIGA
Acting Chief Justice

CHILD'S NAME	CASE NUMBER
O. C.	JV-06-00688

FAILURE TO PROTECT
§ 300(b)

The child bas suffered, or there is a substantial risk that the child will suffer,

[x] as a result of **a* failure or inability of *his* or her parent or guardian to supervise or protect the child adequately

(State the supporting facts concisely and number them b-1, b-2, b-3, etc.):

~~b-1. Woodland Police Department placed the minor, O.C. into protective custody due to the minor's disclosure of physical abuse by her father. The minor reported that she was hit by a belt by her father that left a bruise on her thigh. Woodland Police Department also observed a bruise on the minor's thigh, consistent with being hit with a belt. The minor disclosed five other incidents in the past year. The minor reported that last time she was hit and a mark was left was in her lower back area.~~

b-1. Minor has reported being hit by her father with a belt on more than one occasion; father denies this constituted abuse.

b-2 Father states he is unable to control the minor or meet the minor's needs.

Attorney or Party without Attorney James Joseph Lynch, Jr., (SBN 85805) 4144 Winding Way, # 106, Sacramento 95841 Telephone No.: (916) 548-7790 E-mail (Optional): Attorney for: Father	FILED YOLO SUPERIOR COURT APR 27, 2007 By J Garcia.Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF YOLO 725 COURT STREET ROOM 103 WOODLAND, CA 95695 JUVENILE DIVISION	
CHILD'S NAME: O. C.	HEARING DATE AND TIME:
WAIVER OF RIGHTS—JUVENILE DEPENDENCY	CASE NUMBER: JV-066-0688
TO THE PARENT OF THE ABOVE NAMED CHILD: Read this tom) carefully. The judge will ask you if you understand each right, and you are voluntarily giving up that right	
For items 1, 2, and 3, check each box that applies, unless you have a question.	

1. Petition
   a. ☒ I have read the petition and I understand it.
   b. ☐ The petition has been read to me and I understand it
2. Right to an Attorney. You have the right to be represented by an attorney and one will be appointed for you if you cannot afford one, subject to a claim for payment.
   a. ☐ I give up my right to be represented by an

attorney.

b. ☐ I request the court to appoint an attorney for me.

3. Admission/Submission. I wish to

a. ☐ admit the allegations of the petition

b. [TC] submit the petition on the basis of that father is unable to control the minor ~~the social works or probation officer report and other documents, if any~~..

For items 4 and 5, initial each box that applies, unless you have a question.

4. Waiver of Rights. By admitting the allegations of the petition, as amended, submitting on the petition ~~on the report~~, or plea-ding no contest, I am giving up the following rights:

	Initials
a. The right to a trial or hearing.	[TC]
b. The right to see and hear witnesses who testify.	[TC]
c. The right to cross-examine witnesses, the social worker or probation officer who prepared the report, and the persons whose statements arc contained in the report.	[TC]
d. The right to testify in my own behalf and to present my own evidence and witnesses.	[TC]
e. The right to use the authority of the court to compel witnesses to come to court and to produce evidence.	[TC]
f. Any privilege against self-incrimination in this proceeding	[TC]

JV-190

CHILD'S NAME:	CASE NUMBER: JV-06-00688

5. Consequences

a. I understand that if I plead no contest or submit the petition on the report, the court will probably find that the petition is true. [tc]

b. I understand that if the petition is found to be true and the child is declared a dependant of the court, the court may assume custody of the child, and under certain circumstances, it is possible that no reunification services will be offered or provided. [tc]

d. (Child under age 3 years at time of initial removal) [Not applicable] [tc]

e. (Child age 3 years or older at time of initial removal) For a child age 3 years or order at the time of initial removal, I understand that if the court assumes custody of the child and the child is not returned within one year, or at the most 18 months from the time the child was taken into physical custoy, the court will make a permanent placement plan for the child, which could result in termination of parental rights and placement of the child for adoption. [tc]

Date: 4-27-07	
Tim Cano	
(TYPE OR PRINT NAME)	SIGNATURE

[The remainder of the form was not used]